



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kevin J. Tracey

Application No.: 10/535,267

Group: 1643

371(c) Date: November 22, 2005

Examiner: David J. Blanchard

Confirmation No.: 6690

For: USE OF HMGB POLYPEPTIDES FOR INCREASING IMMUNE
RESPONSES

CERTIFICATE OF MAILING OR TRANSMISSION	
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REPLY TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Restriction Requirement dated March 26, 2008, the claims of Group I (Claims 1-9), defined by the Examiner as being drawn to a pharmaceutical composition comprising a polypeptide comprising an HMGB B box or a functional variant thereof, are elected for prosecution. Applicant reserves the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicant does not hereby abandon or waive any rights in the non-elected inventions.

Applicant has elected the product claims of Group I. Consequently, if the product claims are subsequently found allowable, Applicant requests rejoiner of claims directed to a method of using the product (Group III, Claims 17-28, 30-42 and 45).

An extension of time to respond to the Restriction Requirement is respectfully requested. A Petition for an Extension of Time and the appropriate fee are being filed concurrently.

The requirement is being traversed for the reasons set forth in detail below.

Traversal of the Restriction Requirement

As indicated in the MPEP,

If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to distinct or independent inventions (MPEP § 803, 8th Edition, August 2006 revision, page 800-4, left column).

The claims of the present application were searched during the PCT phase and did not receive a unity of invention objection. "Once the national stage application has been taken up by the examiner, prosecution proceeds in the same manner as for a domestic application with the exception that...(B) unity of invention proceeds as under 37 CFR 1.475." (MPEP § 1893.03, 8th Edition, August 2006 revision, page 1800-190, right column). Under 37 CFR 1.475(b),

An international or national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:...(2) A product and a process of use of said product."

The claims presented have been acknowledged as forming a single general inventive concept and containing a special unifying technical feature. Although the claims are drawn to different categories of invention, they fall into the recognized combination of a product and process of use of said product in accordance with 37 C.F.R. § 1.475(b)(2).

The International Searching Authority was able to find a unifying technical feature common across all of the claims. Applicant requests the combination of Groups I and III into a single group. The claims in Groups I and III have as a central feature a polypeptide comprising an HMGB B box or a functional variant thereof. A search and examination for Applicant's claimed composition comprising a polypeptide comprising an HMGB B box or a functional variant thereof (Group I, claims 1-9) has substantial overlap with a search of Applicant's claimed

method of stimulating/increasing an immune response or treating cancer in an individual comprising administering a polypeptide comprising an HMGB B box or a functional variant thereof (Group III, claims 17-28, 30-42 and 45).

Clearly, a search and examination of these claims can be made without a serious burden on the Examiner. Therefore, Applicant respectfully requests modification of the restriction requirement, wherein the claims of Groups I and III are combined into a single group.